

NORTHWEST TRUSTEE & MANAGEMENT

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by Stephen Trefts, President

AVOIDING COMMON PITFALLS—

Over the years, many of our new trusts were transferred to us from prior trustees. Occasionally a trustee is replaced because of malfeasance. More commonly, the trustee is simply unable to fulfill his or her duties due to a lack of knowledge, too little time, or because of interpersonal conflicts.

We have identified the following pitfalls which a trustee should avoid:

POOR COMMUNICATION

Trustees have a duty to provide timely and accurate reports. The trustee should also be accessible to beneficiaries and able to listen patiently and respond compassionately to their requests. We recently encountered a situation in which the trustee not only failed to provide accountings, but he was also verbally abusive to the handicapped beneficiary. Needless to say, he did not remain as trustee.

CONFLICTS OF INTERESTS

Due to the high level of discretionary authority bestowed upon a trustee, he or she must act with utmost integrity. We were called upon to assist with one situation in which a trustee made substantial gifts to himself and borrowed heavily from his incapacitated relative's trust. He felt justified in doing so because of her past history of generosity toward him. Clearly, his actions constituted a conflict of interest.

FAMILY CONFLICT

Unfortunately, even the best of families experience conflict. Problems often arise among family members when one member is chosen over the others to be trustee or guardian of the estate for a relative. The conflicts are often focused on the management of the incapacitated person's assets. With professional financial management, family members

are able to focus on the relative's well-being rather than financial issues.

INABILITY TO PERFORM

A trustee needs knowledge, skill and a willingness to handle often complex assets or difficult situations. For instance, we served as agent for a woman who wished to remain as trustee for several trusts. Later, when her incapacity prevented her from managing her complex assets, which included commercial and agricultural real estate, we stepped in as successor trustee.

Sometimes trustees have the capacity but lack the willingness to serve. One trust was transferred to us because the trustees did not want to deal with a difficult legal situation regarding a dishonest business partner. At their attorney's recommendation, they resigned and named us trustee to pursue legal remedies on their behalf.

LACK OF TIME

A trustee must perform his or her duties regardless of other personal or professional commitments. In one unfortunate situation, a trustee was so involved with his own business that he neglected the needs of the trust beneficiary. Not fully understanding his duties, he allowed the handicapped beneficiary's family members to squander trust assets intended for her care. After our appointment as successor trustee by the Superior Court, we initiated legal action against the prior trustee which resulted in reimbursement of funds to the trust.

DISREGARDING EXISTING PROFESSIONAL RELATIONSHIPS

It is not uncommon for a trustee to replace existing investment advisors, attorneys or other professionals. While change is sometimes justified, to make a change solely to use the trustee's preferred advisors could cause a disruption in service and create anxiety to trust beneficiaries. As trustee, we attempt to honor

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by Sandy Calbreath, Trust Officer

ABOVE AND BEYOND—

This past year we met a financial advisor who provided service above and beyond the call of duty for his client. The advisor witnessed the financial exploitation of a widow and stepped in to help her.

When the widow, whom we will call Elizabeth, recovered from her initial shock and grief over

the death of her husband, she received a second shock. Her husband's estate had been settled within months of his death, and she found that she had only half of her former assets.

Unbeknownst to Elizabeth, a trusted relative had convinced Elizabeth's husband to rewrite his will in the last days of his life. The will placed the husband's share of their assets into a trust which could be used for Elizabeth's benefit only if she were totally impoverished and on government assistance. The trust would ultimately benefit the relative's child.

Gone were the investment assets which she and her husband had accrued over their lifetimes. Instead, Elizabeth's

share of the estate contained non-income producing real estate and minimal retirement and annuity funds. To make matters worse, the relative controlled her bank accounts and Elizabeth had no access to her funds.

Meanwhile, Elizabeth's financial advisor watched uneasily as assets were withdrawn from her account and questioned whether the estate was divided correctly. He arranged for Elizabeth to meet with us in the hopes that we could help. With the advice of her attorney, Elizabeth appointed Northwest Trustee & Management Services as trustee of her revocable trust to manage her assets and address her legal issues.

When Elizabeth endeavored to regain control of her assets, the relative attempted to have her declared incompetent and himself appointed as her guardian. With a legal team in place to assist her, Elizabeth was able to fight the suit successfully and recover more than \$100,000 in assets which were wrongfully taken from her estate.

Thanks to the willingness of Elizabeth's financial advisor to "blow the whistle" on an appalling situation, Elizabeth now has adequate means to support herself. And, best of all, she can sleep at night knowing that she has a trustworthy team to manage her financial affairs.

COMMON PITFALLS, *continued* —

existing relationships and keep the trustor's professional advisors in place.

A slight twist on the situation involved a beneficiary who was dissatisfied by the return on her trust assets, particularly when she compared it with the return on her personal assets. She requested that the corporate trustee resign and appointed us successor. We retained her personal investment advisor for the trust and she is pleased with the results.

Before accepting appointment as trustee, an individual should consider these common pitfalls and develop a plan for professional management in light of potential conflicts, communication challenges, complexity of trust management and other demands on his or her time.



MEET RANDI MELANCON—

When you call our office these days, you hear the hint of a Cajun accent and receive a large dose of Southern charm from our newest employee, Randi Melancon. We appreciate Randi's efficiency and organization,

and particularly enjoy her "down home" brand of humor. Prior to joining our team a year ago, the Louisiana native worked for an internet company.

At this stage in her life, Randi says most of her recreational activities include her family. She enjoys bicycling, reading, watching movies and the occasional backyard hunt for bugs with her toddler.



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